



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/428,458	10/28/1999	KJETIL TASKEN	Q-56244	4681

7590 09/27/2004  
SUGHRUE MION ZINN MACPEAK & SEAS PLLC  
2100 PENNSYLVANIA AVENUE N W  
WASHINGTON, DC 200373202

EXAMINER

VIVLEMORE, TRACY ANN

ART UNIT	PAPER NUMBER
----------	--------------

1635

DATE MAILED: 09/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b>	<b>Application No.</b> 09/428,458	<b>Applicant(s)</b> TASKEN ET AL.	
	<b>Examiner</b> Tracy Vivlemore	<b>Art Unit</b> 1635	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 31 August 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. **ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).**

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 11 August 2004. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See continuation sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 40,45,48 and 49.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

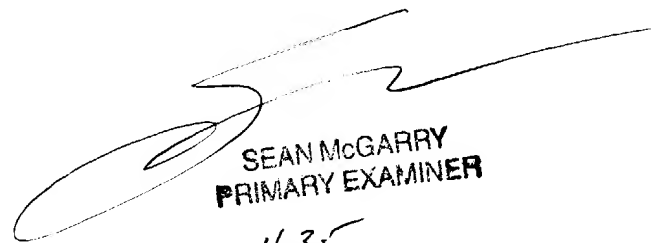
8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☒ Other: See continuation sheet

Continuation of 2. The proposed amendments do not place the application in condition for allowance. Applicant states the amendments have been made pursuant to a teleconference with the previous examiner on August 16, 2004. However, no record of an interview appears in the case and the applicant's amendment does not contain a detailed interview summary.

The proposed amendment to claim 40 broadens, rather than narrows, the scope of the claimed composition. Previously the composition was directed towards treatment of 3 diseases. The scope of the asserted use of the composition has been broadened by deletion of these diseases. This amendment would require a new search and a new consideration of this broadened scope.

The proposed amendment of claim 45 broadens rather than narrows the scope of the claimed method. Previously the method was directed toward treatment of 3 diseases. The scope of the asserted use of the method has been broadened by deletion of these diseases. Rather than being a method directed toward treatment of specific diseases, with the proposed amendment the method is directed toward any situation where a subject would benefit from increase of T-cell proliferation, a scope much broader than the previous treatment method. Such situations would include subjects suffering from any kind of infection from any source, or even a subject suffering from an allergic reaction. This amendment would require a new search and a new consideration of this broadened scope.

Continuation of 10. The amendment is not entered as there has not been a showing of good and sufficient reasons why the amendment is necessary and was not earlier presented.



SEAN MCGARRY  
PRIMARY EXAMINER  
1635